

Attorneys for the
Verizon telephone companies

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¹ The Verizon companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

may or may not be properly trained or familiar with the incumbent's equipment—would have access not only to the wiring for the particular customer the CLEC will serve but also to all of the other customer lines served by that terminal block. In any event, the Commission has clearly recognized that the issue of the appropriate point and manner of CLEC access to an inside wire subloop is properly left for the states to resolve in arbitration proceedings, and Cox's petition is an improper collateral challenge to a decision by the OCC that is currently on appeal to the federal district court. The Commission should therefore deny or dismiss Cox's petition.

1. The Only Issue Presented by Cox Is Whether CLEC Technicians Should Have Direct Access to Network Facilities at an Incumbent's Terminal Block at an MTE.

The issue in Cox's petition is not, as Cox would have it, whether CLECs have a federal right to non-discriminatory, unbundled access to an incumbent's inside wire subloop at an MTE. They clearly do under the Commission's current rules.² Instead, Cox's claim is that it and other CLECs have an unchecked, federal right to manipulate an incumbent's network facilities, such as the terminal block at an MTE, whenever and however they wish in order to access the unbundled inside wire subloop. That right they do not have.

CLECs' right to unbundled access to the inside wire subloop is not unqualified, and the Commission has consistently limited CLECs to access in a "technically feasible manner" and at a "technically feasible point."³ Here, the issues of manner and location are closely related because whether access at a particular *location* is technically feasible may well depend on *how*

² See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("UNE Remand Order"); 47 C.F.R. § 51.319(b)(2).

³ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 350 (2003) ("Triennial Review Order"); see also 47 C.F.R. § 51.319(b)(2).

access at that point is effectuated. For example, as BellSouth notes in its comments, CLEC access at an incumbent's terminal block may be technically feasible where CLECs have access to an intermediate access terminal at that terminal block, thus permitting "direct access" at that point while adequately protecting network facilities.⁴

Significantly for purposes of Cox's petition, the concept of technical feasibility has long been understood to include operational and network integrity concerns. As the Commission stated in the *Local Competition Order*: "Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point . . . will be regarded as relevant evidence that interconnection or access at that point is technically infeasible."⁵ And the Commission emphasized:

[L]egitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network.⁶

Therefore, in determining how and where a CLEC may access the inside wire subloop at an MTE, issues such as network and operational integrity, security and management *must* be taken into account.

⁴ BellSouth's Comments, *Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop*, CC Docket No. 01-338, at 7-15 (filed Dec. 6, 2004) ("*BellSouth Comments*").

⁵ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 198 (1996) ("*Local Competition Order*").

⁶ *Local Competition Order* ¶ 203.

Moreover, as set out in more detail by SBC, BellSouth and Qwest in their comments opposing Cox's petition,⁷ nothing in the *Triennial Review Order* or the *Virginia Arbitration Order*⁸ alters this fundamental limitation on a CLEC's right to access the inside wire subloop at an MTE. Cox's attempt to suggest otherwise by piecing together snippets of language taken out of context should not obscure the continued recognition in each of those orders that CLEC access to the inside wire subloop must be accomplished in a manner consistent with network integrity and security. The *Triennial Review Order* confirmed that CLEC access to an inside wire subloop must be in a "technically feasible manner" and at a "technically feasible point." *Triennial Review Order* ¶ 350. And in the *Virginia Arbitration Order*, the Wireline Competition Bureau recognized Verizon's legitimate interest in both maintaining control of its network facilities and knowing when to bill a CLEC for use of an unbundled subloop. The Bureau accordingly limited CLECs' right to directly access facilities that could affect Verizon's larger network as opposed to facilities, whether Verizon-owned or customer-owned, that would affect only one customer.⁹ Therefore, nothing in these orders or any others creates the right that Cox suggests to direct

⁷ See SBC's Opposition to Cox's Petition for Declaratory Ruling, *Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop*, CC Docket No. 01-338, at 13-19 (filed Dec. 6, 2004) ("SBC Comments"); BellSouth Comments at 3-7 & 19-21; Comments of Qwest Communications International Inc., *Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop*, CC Docket No. 01-338, at 3-7 (filed Dec. 6, 2004) ("Qwest Comments").

⁸ Memorandum Opinion and Order, *Petitions of WorldCom, Cox Virginia Telecom and AT&T of Virginia Pursuant to Section 252(e) of the Communications Act for Preemption Regarding Interconnection Disputes*, 17 FCC Rcd 27039 (2002) ("*Virginia Arbitration Order*").

⁹ See, e.g., *Virginia Arbitration Order* ¶ 422 (noting decreased network security concern where CLEC "technician would handle wire dedicated to a single customer, as opposed to handling distribution facilities on the network side of the NID"); *id.* ¶ 427 ("If WorldCom chooses direct attachment to a nodule on the NID's network side, it is reasonable to expect that Verizon technicians would perform the work").

access by its own technicians to an incumbent's network facilities, such as at the terminal block of an MTE.

Thus, the real question presented by Cox's petition is whether Cox's expansive concept of "direct access" may be squared with the concerns for operational and network integrity that underlie the "technical feasibility" inquiry. It cannot.

2. Network Integrity and Management Concerns Preclude Cox's Alleged Right of "Direct Access."

If the Commission were to decide to address the "direct access" issue raised by Cox in this petition, it should find that giving Cox's and other CLECs' technicians free reign over the network facilities present at an incumbent's terminal block at an MTE inappropriately compromises the integrity and security of an incumbent's network.

As discussed above, the Commission has never required incumbents to grant CLEC employees direct access to the network side of the facilities, and for good reason. Incumbents are charged with the responsibility of maintaining the service level and integrity of their networks, including responsibility for inventorying and maintaining network facilities and for preventing network and service interruptions for both retail and wholesale customers.

Declaration of Thomas E. Church ("Church Decl.") at ¶ 2, attached hereto as Exhibit 1.

Incumbents' networks also have to satisfy various operational performance criteria set by the states, and failure to do so can result in penalties to the incumbent. *Id.* ¶ 2 .

In order to meet their responsibilities, Verizon and other incumbents subject their employees to strict training and competency standards. *Id.* ¶ 3. There is simply no way for an incumbent to know whether or not CLECs' technicians are similarly qualified or are familiar with the network equipment used by the incumbent. *Id.* ¶ 3 . Thus, an incumbent can assure the integrity of its network only if direct access to the network side of its facilities, such as the feeder

distribution interface where the feeder wire from the incumbent's central office connects with the terminal block for an MTE, is limited to its own employees.¹⁰ *Id.* ¶ 3.

Cox completely ignores the significant consequences (and costs) associated with allowing a CLEC's technicians, who may or may not be adequately trained or familiar with the incumbent's equipment, to perform cross-connect activities directly on an incumbent's network facilities. *Id.* ¶ 5. For example, at the terminal block where Cox seeks "direct access," there may be hundreds of wires serving the various units in an MTE, and determining which of these wires must be disconnected to move the customer to the CLEC's network requires considerable training and skill. *Id.* ¶ 5. If a technician makes a mistake and pulls the wrong wires, one or more customers will lose their service. *Id.* ¶ 5.

Moreover, while Cox suggests that its technicians would only perform work on the part of terminal block where its customers' lines connect, terminal blocks generally are not set up in a manner that would permit that type of limited access, without also allowing broader access to other customers' lines and to network facilities. *Id.* ¶ 6. Therefore, the CLEC's technician could do as he or she wanted with any of the other customer lines in the MTE that run from that terminal. *Id.* ¶ 6. In particular, permitting unknown technicians from one or more CLECs to access the terminal block creates the risk that other customers' wiring could be broken, degraded or rearranged, without the knowledge of the incumbent, other CLECs serving those customers, or the customers served by that block. *Id.* ¶ 7. Likewise, uncontrolled access to a terminal block can result in injury to the terminal equipment itself or to the network feeder cable attached to that

¹⁰ Relatedly, many contracts between incumbents and their labor unions require that all work performed on network equipment be performed by the incumbent's employees. *Id.* ¶ 4. Among other things, this limitation helps ensure the safety of the employees who regularly work on such equipment. *Id.* ¶ 4.

terminal. *Id.* ¶ 7. Such damage to the wiring at a terminal block or to the block itself can interrupt service, create interference that diminishes the quality of service, or even result in safety hazards, such as might result from the inadequate grounding of wire. *Id.* ¶ 7. And in particular where more than one CLEC might seek access to the same terminal block, it will often be difficult for an incumbent even to determine who is responsible for damage to network facilities at the terminal block or for disruptions of service. *Id.* ¶ 7.

In addition, permitting uncontrolled access to a terminal block makes it difficult or impossible for incumbents to know when or if an end user's line has been disconnected and attached to a competitor's network. *Id.* ¶ 8. This undermines an incumbent's ability to keep an accurate database of its inventory and facilities, thereby leading to delays in service provisioning and repair. *Id.* ¶ 8. Also, if a CLEC were permitted to directly access a terminal block in order to access the inside wire subloop, the incumbent would have no way of knowing that it should bill a CLEC for such access. *Id.* ¶ 8.

And while the Commission allowed CLECs to collocate in incumbents' central offices, what Cox seeks here is a fundamentally different level of access. The Commission's collocation rules gave CLEC employees access to incumbents' central offices—albeit restricted and monitored access—but they never opened up incumbents' network equipment to CLEC employees like Cox's "direct access" proposal would. *Id.* ¶ 9. Instead, with collocation, incumbents and CLECs are required to negotiate acceptable methods of interconnection that help ensure network integrity.¹¹ *Id.* ¶ 9. Through such arrangements, CLECs are able to connect their collocated equipment to an incumbent's network facilities at a central office, but they are

¹¹ Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 17 FCC Rcd 16960, ¶ 20 (2002).

not permitted to directly work on the network facilities or equipment themselves, as would be the case under Cox's proposal. *Id.* ¶ 9 . Therefore, the network integrity concerns are even greater in this context than with collocation. *Id.* ¶ 9.

Indeed, even in permitting collocation, the Commission recognized the concerns that would be created from a proposal such as that put forward by Cox. The Commission "agree[d] with incumbent LECs that protection of their equipment is crucial to the incumbents' own ability to offer service to their customers," and recognized that "incumbent LECs may establish certain reasonable security measures that will assist in protecting their networks and equipment from harm."¹² Among other things, the Commission suggested that incumbents use "security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems." *Id.* And Verizon and other incumbents actively employ these and other methods to protect their network equipment from CLEC employees involved with collocation. Church Decl. ¶ 10. For obvious reasons, however, incumbent carriers would not be able to take such safeguards at the terminal blocks located at individual MTE properties throughout the country. *Id.* ¶ 10. Access and monitoring such equipment located on other people's property is largely out of the incumbents' control. *Id.* ¶ 10. Therefore, the Commission's responses to this admittedly valid concern that were available in the context of collocation are not present in this context.

As SBC's experience with Cox clearly shows, the risks discussed above are not merely theoretical, but instead are inevitable if direct access to an incumbent's terminal block is

¹² First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, ¶ 48 (1999) ("Collocation Order").

permitted.¹³ Rather than jeopardize network integrity and security, the OCC properly determined that permitting CLEC technicians to directly access a network terminal block at an MTE was technically infeasible, and therefore impermissible. If the Commission decides that it should reach the merits of Cox’s petition, it should reach the same conclusion.

3. Cox’s Petition Is an Improper Collateral Attack of a State Decision Concerning an Issue Left to the States.

In any event, the Commission should dismiss Cox’s petition because it is an impermissible collateral attack on a decision that the Commission left to the state commissions. Cox must pursue the appellate avenues set out in Section 252, rather than disregarding the record on which the OCC based its decision and seeking a declaratory ruling from the Commission.

The framework set out by the Commission clearly identifies who should determine technically feasible points and methods of access to the inside wire subloop—state commissions are charged with these fact-specific judgments. In the *Local Competition Order*, the Commission concluded that in order for an incumbent to “justify a refusal to provide interconnection or access at a point requested by another carrier,” the incumbent “must prove *to the state commission*, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access.”¹⁴ Then later in the *UNE Remand Order*, the Commission again specifically adopted that framework in the context of subloops, stating that:

[Its] approach to subloop unbundling permits evaluation of the technical feasibility of subloop unbundling on a case-by-case basis, and takes into account the different loop plant that has been deployed in different states. We find that the questions of technical feasibility, including . . . whether such interconnection would pose a significant threat to the operation of the

¹³ *SBC Comments*, 11-13 & attached affidavit.

¹⁴ *Local Competition Order* ¶ 203 (emphasis added).

network, are fact specific. *Such issues of technical feasibility are best determined by state commissions, because state commissions can examine the incumbent's specific architecture and the particular technology used over the loop, and thus determine whether, in reality, it is technically feasible to unbundle the subloop where a competing carrier requests.*

UNE Remand Order ¶ 224 (emphasis added). And again in the *Triennial Review Order*, the Commission stated that “[t]o the extent there is disagreement with respect to what is ‘technically feasible’ with respect to subloop access at a multiunit premises, this issue is *left to the state* in the context of particular interconnection arrangements pursuant to section 252 of the Act, which can take into account the particular incumbent LEC’s network architecture as well as the requesting carrier’s network.” *Triennial Review Order* ¶ 350 n.1057.¹⁵ Therefore, notwithstanding Cox’s complaints concerning “inconsistent” determinations by various state commissions, the Commission clearly envisioned fact-specific, case-by-case determinations concerning where and how CLECs should be allowed access to an inside wire subloop.

As SBC spells out in detail in its comments, the OCC did just that in Cox’s case and determined that allowing Cox technicians to directly access MTE network terminal blocks posed an unacceptable risk to SBC’s network.¹⁶ Notably, the OCC had before it a substantial factual record documenting the many problems that had in fact arisen as a result of Cox’s previous “self-help” approach of accessing SBC’s network facilities without notice or permission.¹⁷

¹⁵ See also 47 C.F.R. § 51.319(b)(3). (“If parties are unable to reach agreement through voluntary negotiations as to whether it is technically feasible . . . to unbundle a . . . subloop for access to multiunit premises wiring at that point where a telecommunications carrier requests, the incumbent LEC shall have the burden of demonstrating *to the state commission, in state proceedings* under section 252 of the Act, . . . that it is not technically feasible to unbundle the subloop at the point requested.” (emphasis added)).

¹⁶ *SBC Comments* at 4-6.

¹⁷ *SBC Comments* at 11-13 & attached affidavit.

Under these circumstances, Cox’s petition for a “declaratory ruling” is in fact an impermissible collateral attack on the decision of the OCC—a decision that is left to the OCC to make in the context of individual arbitration proceedings. 47 C.F.R. § 51.319(b)(3). Instead of running to the Commission to seek relief from a state decision with which it disagreed, the proper procedural avenue for Cox to challenge the OCC’s decision is set out in Section 252(c)(6) of the Act, which says:

In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section.

47 U.S.C. § 252(c)(6).

Although, Cox filed a challenge to the OCC decision with the U.S. District Court for the Western District of Oklahoma under this provision, it immediately sought a stay of that appeal in order to pursue its petition for declaratory ruling from the Commission.¹⁸

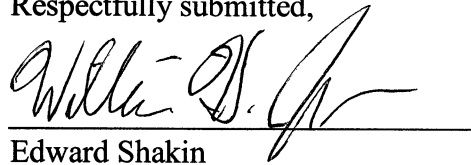
It is clear that Cox’s primary goal in this proceeding is for the Commission to overturn the decision of the OCC, without Cox having to proceed through the statutorily-prescribed appeals process that would allow the decision to be reviewed based on the record that was established. The Commission should not countenance Cox’s disregard of the appeals process required by Section 252(c)(6). Here, the OCC did its job and decided that the facts were not on Cox’s side. The Commission should not allow Cox to now distance itself from the record that was created and avoid that unfavorable, but well-founded decision through the declaratory ruling procedure. Therefore, the Commission should dismiss Cox’s improper petition.

¹⁸ *SBC Comments* at 6.

Conclusion

For the reasons discussed above, the Commission should dismiss Cox's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William H. Johnson", is written over a horizontal line.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Clarification of the Commission's Rules and)	WC Docket No. 01-338
Policies Regarding Unbundled Access to)	
Incumbent Local Exchange Carriers' Inside)	
Wire Subloop)	
)	
)	
)	
)	

DECLARATION OF THOMAS E. CHURCH

1. My name is Thomas E. Church, and . I am employed by Verizon as Senior Product Manager responsible for product development and product management for unbundled House & Riser Cable and unbundled Network Interface Devices. I am submitting this declaration in support of Verizon's Reply Comments in Opposition to Cox's Petition for Declaratory Ruling in the above-captioned proceeding.

2. Each local carrier has the responsibility of maintaining the service level and integrity of its own networks, including responsibility for inventorying and maintaining network facilities and for preventing network and service interruptions for both retail and wholesale customers. Incumbent local exchange carriers' networks also have to satisfy various operational performance criteria set by the states, and failure to do so can result in penalties to the incumbent.

3. In order to meet its responsibilities, Verizon subjects its employees to strict training and competency standards. There is simply no way for an incumbent local exchange carrier to know whether or not CLECs' technicians are similarly qualified or are familiar with the network equipment used by the incumbent. Thus, an incumbent

local exchange carrier can assure the integrity of its network only if direct access to the network side of its facilities, such as the feeder distribution interface (“FDI”) where the feeder wire from the incumbent’s central office connects with the terminal block for an MTE, is limited to its own employees.

4. Many contracts between incumbents and their labor unions require that all work performed on network equipment be performed by the incumbent’s employees. Among other things, this limitation helps ensure the safety of the employees who regularly work on such equipment.
5. In its petition for declaratory ruling, Cox completely ignores the significant consequences (and costs) associated with allowing a CLEC’s technicians, who may or may not be adequately trained or familiar with the incumbent’s equipment, to perform cross-connect activities directly on an incumbent’s network facilities. For example, at the terminal block where Cox seeks “direct access,” there may be hundreds of wires serving the various units in an MTE, and determining which of these wires must be disconnected to move the customer to the CLEC’s network requires considerable training and skill. If a technician makes a mistake and pulls the wrong wires, one or more customers will lose their service.
6. Moreover, while Cox suggests that its technicians would only perform work on the part of terminal block where its customers’ lines connect, terminal blocks generally are not set up in a manner that would permit that type of limited access, without also allowing broader access to other customers’ lines and to network facilities. Therefore, the CLEC’s technician could do as he or she wanted with any of the other customer lines in the MTE that run from that terminal.

7. In particular, permitting unknown technicians from one or more CLECs to access the terminal block creates the risk that other customers' wiring could be broken, degraded or rearranged, without the knowledge of the incumbent or the customers served by that block. Likewise, uncontrolled access to a terminal block can result in injury to the terminal equipment itself or to the network feeder cable attached to that terminal. Such damage to the wiring at a terminal block or to the block itself can interrupt service, create interference that diminishes the quality of service, or even result in safety hazards, such as might result from the inadequate grounding of wire. And in particular where more than one CLEC might seek access to the same terminal block, it will often be difficult for an incumbent even to determine who is responsible for damage to network facilities at the terminal block or for disruptions of service.
8. In addition, permitting uncontrolled access to a terminal block makes it difficult or impossible for incumbents to know when or if an end user's line has been disconnected and attached to a competitor's network. This undermines an incumbent's ability to keep an accurate database of its inventory and facilities, thereby leading to delays in service provisioning and repair. Also, if a CLEC were permitted to directly access a terminal block in order to access the inside wire subloop, the incumbent would have no way of knowing that it should bill a CLEC for such access.
9. While the collocation rules gave CLEC employees access to incumbents' central offices—albeit restricted and monitored access—those rules never opened up incumbents' network equipment to CLEC employees like Cox's "direct access" proposal would. Instead, with collocation, Verizon and CLECs are required to

negotiate acceptable methods of interconnection that help ensure network integrity.

Through such arrangements, CLECs are able to connect their collocated equipment to Verizon's network facilities at a central office, but they are not permitted to directly work on the network facilities or equipment themselves, as would be the case under Cox's proposal.

10. In accord with the Commission's suggestions, Verizon uses security cameras and other monitoring systems to protect its equipment and networks from CLEC employees present in its central offices, and Verizon requires CLEC personnel to use badges with computerized tracking systems. Verizon would not be able to take similar safeguards at the terminal blocks located at individual MTE properties throughout the country. Access and monitoring such equipment located on other people's property is largely out of the incumbents' control.

I declare under the penalty of perjury that facts stated herein are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Thomas E. Church", written over a horizontal line.

Thomas E. Church
Senior Product Manager, Verizon
Dated: December 21, 2004